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No. 88-436

In the Supreme Court of the United States

OCTOBER TERM, 1988

STEPHEN B. HEINTZ, COMMISSIONER,
DEPARTMENT OF INCOME
MAINTENANCE OF CONNECTICUT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Supreme Court of Connecticut correctly held that state liens relating to public assistance payments were not perfected at the time the federal tax liens in this case were recorded because the state liens were contingent under Connecticut law.

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OPINIONS BELOW

The opinion of the Supreme Court of Connecticut (Pet. App. 1a-12a) is reported at 207 Conn. 743. The opinion of the Superior Court for the Judicial District of Danbury (Pet. App. 13a-16a) is unreported.

JURISDICTION

The judgment of the Supreme Court of Connecticut was entered on June 14, 1988. The petition for a writ of certiorari was filed on September 12, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1257.

STATEMENT

1. This case began as a foreclosure action brought in Connecticut state court by the Danbury Savings and Loan Association to foreclose its mortgage on a home belonging

to Colin and Valerie Delaney (Pet. App. 2a). The Danbury Savings and Loan named other creditors as defendants, including the United States and the State of Connecticut, which both held liens on the home (*ibid.*).

The liens of the United States arose under 26 U.S.C. 6321 when the Delaneys failed to pay assessments of federal income taxes, interest, and penalties for the tax years 1978 and 1982 (Pet. App. 3a). The United States' lien for the 1978 taxes arose on September 21, 1981, and a notice of that lien was filed on January 11, 1983. The government's lien for the 1982 taxes arose on October 23, 1985, and a notice was recorded on September 10, 1986 (*ibid.*). As of March 1987, the United States claimed $34,410 under its tax liens (*ibid.*).

The State of Connecticut's liens arise from the state's grant of public assistance to Valerie Delaney (Pet. App. 4a). On August 24, 1981, petitioner recorded notices of liens on the Delaneys' residence (*ibid.*). Petitioner asserts that the debt secured by its liens is $60,248 (*ibid.*).

2. The trial court ordered a foreclosure sale of the Delaneys' residence (Pet. App. 2a). A balance of $55,000 remained after claims were paid to lienholders prior to the United States and petitioner. The United States then filed a motion asserting that its tax liens were entitled to priority over the liens held by petitioner (*id.* at 3a).

The trial court ruled that the federal tax liens were entitled to priority because petitioner's liens were not "specific, perfected and choate" at the time the federal notices were filed (Pet. App. 4a (footnote omitted)). Relying on 31 U.S.C. 3713—the so-called federal insolvency statute—the trial court reasoned that a state lien is entitled to priority over federal tax liens only if the state lien is "reduced to possession before the attachment of the federal liens" (Pet. App. 5a).

3. The Supreme Court of Connecticut affirmed the judgment but adopted a different analysis. The court ruled (Pet. App. 6a) that 31 U.S.C. 3713 did not apply in this case because the United States did not show that Valerie Delaney was insolvent at the time this foreclosure proceeding was commenced. Nevertheless, the court held that the state liens in this case were not perfected at the time the federal liens were recorded (Pet. App. 6a-7a). The court observed that, under state law (Conn. Gen. Stat. Ann. § 17-82c (West 1975)), petitioner was not authorized to seize the Delaneys' residence to satisfy the claim for reimbursement of public-assistance payments. Rather, petitioner was required to bring a court action to obtain a judgment. The court stated that such a judgment might then be satisfied, in "the equitable exercise of judicial discretion," by selling the judgment-creditor's property (Pet. App. 10a). Because petitioner had not obtained a judgment in this case at the time the federal liens attached, the court concluded, petitioner did not have a prior perfected lien under the test for priorities set forth by this Court in *United States* v. *Equitable Life Assurance Society*, 384 U.S. 323, 327-328 (1966).

ARGUMENT

The decision of the Supreme Court of Connecticut is correct and does not conflict with the decision of any other court. Thus, no further review is warranted.

1. The federal rule governing the priority of federal tax liens and liens created by state law is well settled. A state lien has priority only if it is "specific and perfected" at the time the federal lien is recorded (*United States* v. *Equitable Life Assurance Co*, 384 U.S. at 327). And a lien created by state law is "specific and perfected" when "there is nothing more to be done . . . — when the identity of the

lienor, the property subject to the lien, and the amount of the lien are established" (*id.* at 327-328 (citation omitted)). See also *United States* v. *Vermont*, 377 U.S. 351, 358 (1964); *United States* v. *New Britain*, 347 U.S. 81 (1954).

Here, the Supreme Court of Connecticut correctly applied the federal rule in light of Connecticut's law governing liens for reimbursement of public-assistance payments. See generally *United States* v. *Security Trust & Savings Bank*, 340 U.S. 47, 50 (1950) ("if the state court itself describes the [state] lien as inchoate, this classification is 'practically conclusive' " (citing *Illinois* v. *Campbell*, 329 U.S. 362, 371 (1947)). The Connecticut court held that the state liens were not first perfected under the federal rule because petitioner may enforce its liens only by obtaining a judgment in a foreclosure action, and "such a foreclosure action, far from being a ministerial act, invokes the equitable exercise of judicial discretion" (Pet. App. 10a). Until a foreclosure judgment is obtained, therefore, it cannot be said that "there is nothing more to be done" with respect to petitioner's liens. Accord *United States* v. *Security Trust & Savings Bank*, 340 U.S. at 50 (attachment lien to satisfy potential court judgment was not perfected prior to federal tax lien because attachment lien was subject to "[n]umerous contingencies").

2. Contrary to petitioner's contention (Pet. 6-12), the decision of the Supreme Court of Connecticut does not conflict with *Hoare* v. *United States*, 294 F.2d 823 (9th Cir. 1961), nor with *American Surety Co.* v. *Sundberg*, 58 Wash. 2d 337, 363 P.2d 99 (1961), cert. denied, 368 U.S. 989 (1962). In *Hoare*, the court noted that the chattel mortgage at issue was perfected before a judgment of foreclosure because, unlike this case, the foreclosure proceeding contemplated by Washington law was solely an enforcement mechanism to enable the mortgagee to collect

a definite debt. In this case, by contrast, state law provides that public-assistance liens may be enforced, it at all, only after a court proceeding subject to the "equitable exercise of judicial discretion" (Pet. App. 10a). Under Connecticut law, in such a proceeding the court "has discretion * * * to withhold foreclosure or to reduce the amount of the stated indebtedness." *Hamm* v. *Taylor,* 180 Conn. 491, 497, 429 A.2d 946, 949 (1980). Accordingly, the different results in *Hoare* and in this case are explained by the differences in the state laws.

Similarly, the mortgage in *American Surety Co.* secured advances that could be ascertained at any time with mathematical precision. Thus, the amount secured by the mortgage was always clear and knowable. But in this case, the Supreme Court of Connecticut ruled, as a matter of state law, that the effectiveness of petitioner's liens (as well as the amount of the debt) is subject to equitable considerations that would come to bear in a court action designed to recover petitioner's claim. Hence, under the settled federal rule of priorities, petitioner's contingent lien under state law (Conn. Gen. Stat. Ann. § 17-82c (West 1975)) was not perfected at the time the federal tax liens were recorded.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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